

STATE OF NORTH CAROLINA



GOVERNMENTAL EVALUATION COMMISSION REPORT  
ON  
NORTH CAROLINA REAL ESTATE LICENSING BOARD

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Raleigh, North Carolina 27601

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## SUMMARY

As directed by Chapter 143, Article 1.1, of the General Statutes, the Governmental Evaluation Commission has conducted its evaluation of the Real Estate Licensing Board created by Chapter 93A of the General Statutes.

The Commission concludes that the licensing of real estate brokers and salesmen is necessary to protect the public's health, safety, and welfare, but that the relevant statutes need to be modified to make the program more responsive to public needs.

The statute does not go far enough in giving the public adequate protection from fraudulent and incompetent brokers and salesmen. The following recommendations, conclusions, and findings show the inadequacies of the statute and the changes needed to give the Board the power it needs to protect the public.

The Commission recommends that Chapter 93A of the General Statutes be continued, and modified as shown in the Recommendations section of this report to make the statute more in accord with public needs.



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Governmental Evaluation Commission  
Report on Real Estate Licensing Board

RECOMMENDATIONS

*THE COMMISSION RECOMMENDS THAT THE RELEVANT STATUTES BE AMENDED TO:*

1. Give the Board the authority to discipline licensees who violate the ethical standards of the real estate licensing law when selling or leasing their own property.
2. Give the Board authority to bring a disciplinary action against a licensee who has committed an offense involving moral turpitude outside the scope of the real estate business.
3. Give the Board authority to seek injunctive relief against non-licensees and licensees for violation of real estate statutes and the rules and regulations of the Board.
4. Allow the Board to make an investigation of the ethical background of the applicant, and to raise the entry fee and the annual relicensing fee for brokers and salesmen. The entry fee should be high enough to pay for an investigation of the ethical background of the applicant.
5. Increase the number of Board members from five (5) to seven (7). Two of the members must be persons from the part of the public not involved either directly or indirectly with the real estate business, and two of the members must be from the real estate business community.
6. Grant the Board authority to periodically inspect records relating to a broker's escrow or trust account.
7. Repeal Chapter 93A of the General Statutes, entitled "*REAL ESTATE BROKERS AND SALESMEN*", effective July 1, 1985, except for purposes of a winding up period similar to that provided by Section 5 of Chapter 712, Session Laws of 1977 (G.S. 143-34.14), unless the General Assembly takes appropriate action before July 1, 1985 to prevent its repeal.

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CONCLUSIONS:

*THE COMMISSION CONCLUDES:*

1. That the exercise of the State's police power in regulating the real estate industry does protect the public from potential serious harm, and that if there were no regulatory statute, serious harm to the public would result.
2. That the present statute does not give the Real Estate Licensing Board the power or the means to make a substantive investigation to determine the good character of an applicant before the applicant is granted a license.
3. That the enforcement activity of the Real Estate Licensing Board is limited by the lack of power to seek an injunction, by the narrow scope of range of the conduct of a licensee which is under the jurisdiction of the Board, and by the lack of a proper enforcement staff.
4. That the statute does not require public participation in the making of the rules and decisions of the Real Estate Licensing Board.
5. That the inability of the Board to examine the records relating to client's funds, causes a potential serious harm to the public, and that the existence of authority to make random inspections would cause brokers to become more diligent in the proper keeping of these accounts.



FINDINGS:

To support the above Conclusions and Recommendations, the Commission makes the following Findings:

1. The purpose of the statute creating the Licensing Board for Real Estate Brokers and Salesmen is the protection of sellers, purchasers, lessors, and lessees of real property from fraudulent, and incompetent brokers and salesmen, and the exercise of the police power of the State to regulate the real estate business is founded upon the heavy impact of the real estate business on the public economy. The Board processed 179 verified complaints of wrongdoing in fiscal year 1977-78. This volume of verified complaints is substantial.
2. The Board granted 5,800 licenses in fiscal year 1977-78. The Board has three investigators to conduct an investigation of the moral character of applicants. Unless the applicant discloses incriminating information in the application, the Board does not make an intense investigation. If the application does not raise suspicion, the Board routinely issues a license when the applicant passes the examination. There were 32,011 licensed practitioners in fiscal year 1977-78, including 5,800 new licenses granted. About one-half of the 32,011 licensees are active. The staff cannot make a thorough investigation of the practices of its licensees, or of non-licensees, in real estate transactions.
3. Many of the complaints to the Board involve a pattern of illegal acts, but the statute does not give explicit authority for the Board to seek an injunction to prevent future illegal action by licensees or non-licensees. The Board believes the statute gives it power to seek redress for past frauds only, and that it lacks authority to take action to prevent future frauds.

Many of the complaints from the public involve the sale of real property owned by licensees, but the Board believes it lacks jurisdiction to take disciplinary action against licensees who defraud the public in the sale of their own property.

Some licensees have been convicted of crimes involving a degree of moral turpitude, but which were not directly related to acts of the licensee while engaged in real estate transactions. The judicial and administrative interpretations of the relationship of acts of moral turpitude to licensing lead the Board to believe that it lacks the power to take action against licensees for committing crimes involving moral turpitude which are outside the scope of the real estate field.

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4. The Board has five (5) members. The statute requires two of these to be licensed real estate brokers or salesmen. The Board presently has three (3) other members who are or have been doing work involved with the real estate business. There is no statutory requirement for Board members who represent the public interest. The interest of the public is not now being met by the present statutory provisions for Board membership.
5. The effect of these recommendations on the real estate licensing program are a matter of concern to the public. Five years experience with the operation of the suggested changes should give enough of a record to evaluate their effect. The entire program and the Board should be re-evaluated by the General Assembly in time for corrective action in the 1985 session of the legislature.
6. That the number of complaints to the Real Estate Board on the improper handling of broker's escrow or trust accounts is a result of carelessness or inattention to regulations relating to such accounts, and that the improper handling is seldom due to fraud, and that the possibility of an unannounced audit on brokers selected at random, would cause brokers to keep these accounts with greater care.

## INTRODUCTION TO GOVERNMENTAL EVALUATION COMMISSION

Chapter 143, Article 1.1, of the General Statutes terminates the regulation of various occupations. By repealing the laws establishing them, a number of boards and commissions that license or regulate occupations are scheduled to be terminated every two years. One-third of the total of these agencies will cease to exist on July 1, 1979, unless re-established by the General Assembly.

The statute requires that prior to termination each agency be reviewed by the Governmental Evaluation Commission. The Commission is charged with conducting a "performance evaluation of each program or function scheduled for termination."

Upon completion of the evaluation, the Commission will submit a report to the General Assembly, including a recommendation as to whether the program or function in question, and the responsible agency, "should be terminated, reconstituted, re-established, or continued with or without modification of the relevant statutes."

The statute states that the Commission's basic determination is "*of the need for continuance of an agency program or function*", and that it shall use 13 listed evaluation elements in making its determination. The Commission is not limited to the use of the 13 elements in determining the presence of a public need for the continuance of a program or agency.

The Commission was authorized to employ a staff to help it in its work. The staff will conduct an evaluation and report its findings to the Commission in a staff report. The agencies may be given the opportunity to appear before the Commission and respond to the staff report. After making any modifications it believes desirable, the Commission will adopt a Proposed Commission Report.

The statute requires that public hearings be held on the proposed report, after a notice of the substance of the report and other details of the hearing is published. Upon completion of the hearing and consideration of the submitted evidence and arguments with respect to this evaluation, the Commission shall adopt its final recommendations. These recommendations will then be submitted to the General Assembly for its deliberation.

### SCOPE OF THE EVALUATION

The purposes of the evaluation process are stated in the statute creating the Governmental Evaluation Commission.

*§143-34.10. Findings and purposes. - The General Assembly finds that state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules and regulations and that the whole process developed without sufficient legislative oversight, regulatory accountability, or a system of checks and balances. The General Assembly further finds that by establishing a system for the termination, continuation, and re-establishment of such agencies, it will be in better position to evaluate the need for the continued existence of existing and future regulatory bodies.*

A recommendation on the "need for the continued existence of existing....regulatory bodies" is the end product of this evaluation process. An evaluation of "need" for the continued existence must focus on the public benefits resulting from the continued existence of a program or agency. The benefits to the persons the agency regulates are not reasons for continuing the agency.

In focusing on "need" the inevitable question that must be considered is: What is the harm to the public if there is no regulation of the occupation?

It can be argued that some possible harm is present in allowing unlicensed persons to serve the public in any occupation or capacity. There is always some risk that a member of the public will choose the wrong person in a selection process where there is no knowledge of competency or honesty. However, this selection process is a hallmark and strength of the free enterprise system.

On the other hand, regulation in any form, by any means, is



restrictive of certain individual liberties protected by Article 1.1 of the North Carolina Constitution, which provides that all persons are afforded rights of "life, liberty, and the enjoyment of the fruits of their on labor, and the pursuit of happiness." The state, through its police power, may enact legislation which invades these rights only if there is a real and substantial relationship between the legislation and the protection of the public health, safety, or welfare.

In the evaluation process, the underlying question asked by the legislature can be stated: Is this regulation a proper exercise of the state's police power? Is the public need for regulation sufficient to justify making available to the regulatory body the authority of the State of North Carolina to imprison, to fine, and to deprive the right of earning a living to a person who violates the regulatory statute? The regulatory statute makes available to the agency, for enforcement, the State Judiciary, the State Attorney General, the police, and the power to collect money for use of the agency.

The evaluation question to be answered could be stated another way: Does this regulatory statute protect the public from potential serious harm so that if there were no statute, serious harm would be done to the public's health, safety, or welfare?

The key words are "serious harm". If the answer to the evaluation question is "No", then there is no public need for the program or agency and the statute must not be continued.

If the answer is "Yes", then the Commission must look at all parts of the program and agency to determine if they are doing what the statute

calls for them to do in an efficient and effective manner.

The General Assembly is the final authority on the recommendations of the Commission. A Committee of Reference in each House of the General Assembly will hold a public hearing on the recommendations relating to each agency. In the hearing the agency has the burden of demonstrating a public need for the continued existence of the agency and its program or function.

## HISTORICAL BACKGROUND

The North Carolina Real Estate Licensing Board has been in existence approximately 20 years. Regulation of the real estate occupation in this state began in 1957 with the enactment of Chapter 93A of the North Carolina General Statutes. The effective date of the statute was July 1, 1957, thereby creating the 26th state licensing board. The statute applies to both real estate brokers and real estate salesmen.

A broker is defined as:

*"Any person, partnership, association, or corporation, who for a compensation or valuable consideration or promise thereof, lists or offers to list, sells or offers to sell, buys or offers to buy, auctions or offers to auction (not including mere crier of sales), or negotiates the purchase or sale or exchange of real estate, or who leases or offers to lease, or who sells or offers to sell leases of whatever character, or rents or offers to rent any real estate or the improvement thereon for others. A broker shall also be deemed to include a person, partnership, association, or corporation who for a fee sells or offers to sell the name or names of persons, partnerships, associations, or corporations who have real estate for rental, lease or sell."*

A real estate salesman includes:

*"Any person who under supervision of a real estate broker, for a compensation or valuable consideration is associated with or engaged by or in behalf of a licensed real estate broker to do, perform or deal in any act, acts or transactions set out or comprehended by the foregoing definition of real estate broker."*

The primary functions of the Board include licensing, record-keeping, and regulation. The Board consists of five members appointed by the Governor who are given the authority to make rules and regulations



necessary for the effective administration of the act. Two members of the Board must be licensed real estate brokers or salesmen. The first Board member was appointed in August, 1957. Shortly thereafter, a secretary-treasurer was employed.

The constitutionality of the Real Estate Licensing Board was attacked, but the issue was settled in favor of the Board, in the N.C. Supreme Court case of State v. Warren, 252 NC 690. In that case, the court held that the real estate business affected a substantial public interest; and thus, regulation, for the purpose of protecting and promoting the general welfare of the people, was deemed constitutional.

The Board gave its first written examination on December 6, 1957. Prior to this time, however, some 2,500 licenses were issued by means of the "grandfather clause" in the statute.

From 1960-1970, there was an increase in brokers and salesmen from 4,000 to nearly 10,500. From 1970-75, approximately 18,000 individuals out of 31,366 applicants were licensed as real estate salesmen or brokers. There has been a constant increase in the number of licensees since the creation of the Board.

The Board has three field representatives who are charged with the responsibility of investigating complaints and assisting brokers and salesmen with problems involving their licenses. The first field representative was hired in 1962.

Since 1972, via an opinion of the Attorney General's office, all corporations engaging in real estate brokerage must be licensed.

Due to the steady increase in applications for licensing and other activities of the Board, the staff of the Board has increased as well. Presently, the staff of the N.C. Real Estate Licensing Board includes the Secretary-Treasurer, the administrative assistant, five full-time secretaries, three field representatives, continuous part-time employees, and an "in house" attorney from the Attorney General's office.

### EVALUATION ELEMENTS

The statute lists 13 evaluation elements to be used in making a determination of the need for continuance of an agency program or function. The statute specifically allows other evaluation elements to be used.

The performance evaluation of the Board of Real Estate using the 13 elements follows:

#### EVALUATION ELEMENT #1

*AN IDENTIFICATION OF THE OBJECTIVES INTENDED FOR THE  
AGENCY PROGRAM AND THE PROBLEM OR NEED WHICH THE PROGRAM  
WAS INTENDED TO ADDRESS.*

The enabling statute for the Licensing Board for Real Estate Brokers and Salesmen does not include a statement of the objectives of the agency program. The issue was addressed, however, in the case of McArver v. Gerukos where the N.C. Supreme Court found the purpose of the chapter to be the protection of sellers, purchasers, lessors and lessees of real property from fraudulent and incompetent brokers and salesmen.

EVALUATION ELEMENT #2

*AN ASSESSMENT OF THE DEGREE TO WHICH THE ORIGINAL OBJECTIVES OF THE AGENCY PROGRAM HAVE BEEN ACHIEVED EXPRESSED IN TERMS OF PERFORMANCE, IMPACT, OR ACCOMPLISHMENTS OF THE PROGRAM AND OF THE PROBLEM OR NEED WHICH IT WAS INTENDED TO ADDRESS. SUCH ASSESSMENT SHALL EMPLOY PROCEDURES OR METHODS OF ANALYSIS WHICH THE COMMISSION DETERMINES TO BE APPROPRIATE TO THE TYPE OR CHARACTER OF THE PROGRAM.*

The Real Estate Licensing Board has two basic objectives: 1) To increase administrative efficiency in performing those functions set forth in the licensing law, and 2) to increase its involvement in education and information programs relating to the real estate brokerage business for the information, education, guidance, and protection of the general public, licensees and applicants for license. The main function of the Board is to license brokers and salesmen and to see that qualifications and activities of such brokers and salesmen are in accord with the law and in the best interest of the public.

The problem intended to be addressed by the Real Estate Licensing Board is the determination of whether the licensees possess the requisite honesty, truthfulness and integrity. It would appear that the Board was established to protect the public from fraudulent real estate salesmen and brokers.

The Board licenses by examination. Those applicants who pass the

examination are considered for licensing with due reference being given to their character. The Board does not have explicit statutory authority to nor has it promulgated any rule which would allow it to conduct a thorough investigation of the applicant to better determine his propensity for honesty. The license application merely asks the applicant to disclose any record of business or professional license revocation, suspension, or denial, or any disciplinary actions invoked against him by some other licensing body, any prior or pending criminal arrests or convictions, and any unpaid judgments outstanding against him. The applicant is also required to submit the endorsement of two citizens residing in his community who will attest to his good moral character, reputation for honesty, truthfulness and integrity. Verification of an applicant's honesty or moral character or the lack thereof is difficult in any profession, but in a profession that has 32,000 licensees its virtually impossible. Licensing by examination allegedly measures competency and not honesty. It's difficult to ascertain how the licensing procedure determines which individuals are possessed of the requisite truthfulness and honesty.

The Board has enforcement powers which theoretically bear some relationship to the protection of the public from unscrupulous practitioners. The Board is given authority to investigate and assist in the preparation of written verified complaints. If it appears therefrom that a licensee has violated the licensing law and that a prima facie case exists, the Board holds a public hearing. The complaint must be notarized or it will not be considered by the Board. In 1978 the Board

processed 179 complaints and held 30 disciplinary hearings. The Board revoked 9 licenses, suspended 9, and issued 8 reprimands. Although the Board's staff consists of 3 field representatives, there is no indication that it actively inspects licensees to assure that they do not violate the statute or the rules promulgated by the Board. In practice the field representatives are called into action after a complaint has been filed by the consumer.

EVALUATION ELEMENT #3

*A STATEMENT OF THE PERFORMANCE AND ACCOMPLISHMENTS  
OF THE AGENCY PROGRAM IN THE LAST FISCAL YEAR AND OF  
THE BUDGETARY COSTS INCURRED IN THE OPERATION OF THE  
PROGRAM.*

The General Assembly created the Real Estate Licensing Board to protect the general public from fraudulent or incompetent brokers and salesmen. To achieve this objective, the Board is charged with two responsibilities: (1) the licensing of qualified applicants, and (2) the enforcement of professional standards.

In performance of its licensing function, the Real Estate Licensing Board administered 10,351 examinations in the last fiscal year, resulting in the issuance of 5,800 real estate licenses. (See Table 1, Licensing Profile and History.) To accomodate the massive number of applicants, the Board now offers the examination eleven (11) months of the year and provides the applicant with the opportunity to request a preference as to one of the two testing sites, Raleigh or Winston-Salem. If an applicant does not appear at the initial examination which has been scheduled, or fails to pass such an examination, the Board will automatically reschedule him to take the examination to be given two months later. This procedure accounts for the discrepancy between the number of examinations given and the number of applications processed during 1977 and 1978 appearing in Table 1.

To enforce the professional standards of its 32,000 member organization,

the Board has adopted a complaint procedure found in Table 2. As noted from the table, 147 verified complaints were processed during fiscal year 1978. Less than 30% of these complaints resulted in any disciplinary hearing or action taken. Of the nine licenses revoked by the Board, two of these revocations followed criminal conviction of the licensees.

The Real Estate Licensing Board incurred budgetary expenditures of \$508,154.55 during the last fiscal year. (See Table 3). It should be noted that of the non-operating expenses, regulation accounted for only 22% of the total with the balance going for licensing.



EVALUATION ELEMENT #4

A STATEMENT OF THE NUMBER AND TYPES OF PERSONS  
SERVED BY THE AGENCY PROGRAM.

There are approximately 32,000 real estate brokers and salesmen licensed in North Carolina. The Real Estate Licensing Board is unable to produce statistics as to the dollar volume of business performed by the licensees, although, it is generally accepted that this industry has a substantial impact on North Carolina's economy.

EVALUATION ELEMENT #5

A SUMMARY STATEMENT FOR THE LAST COMPLETED FISCAL YEAR,  
OR THE NUMBER, BY GRADE, AND COST OF PERSONNEL EMPLOYED  
IN CARRYING OUT THE AGENCY PROGRAM AND A SUMMARY STATEMENT  
OF THE COST OF PERSONNEL EMPLOYED UNDER CONTRACT IN  
CARRYING OUT THE PROGRAM.

During the last fiscal year, the staff for the N.C. Real Estate Licensing Board was composed of two administrative officers, three real estate field representatives, and six other staff members performing various clerical functions. Salaries of full-time personnel amounted to approximately \$154,000. (See Table 4 ). An additional \$14,000 was paid to part-time personnel, including payments to monitors and seasonal clerical help.

EVALUATION ELEMENT #6

*AN ASSESSMENT OF THE DEGREE TO WHICH THE OVERALL POLICIES OF THE AGENCY PROGRAM, AS EXPRESSED IN THE RULES, REGULATIONS, ORDERS, STANDARDS, CRITERIA, AND DECISIONS OF THE AGENCY MEET THE OBJECTIVES OF THE GENERAL ASSEMBLY IN ESTABLISHING THE PROGRAM.*

This evaluation element focused primarily on the rules and regulations of the agency along with the objectives of the agency as stated. In conducting this review, a comparison was made between the rules, regulations, and objectives of the agency, and the original statutory intent as identified in Evaluation Element #1. Statements of objectives were obtained from the agency in response to interrogatories. In assessing the extent to which the present rules and objectives of the agency reflect the original intent of the General Assembly, regulatory functions were divided into two categories, i.e., licensing and enforcement. In addition a review was made of the original social, economic, and legal intent of the statute in relation to the present rules and objectives of the agency where feasible.

The General Assembly failed to clearly identify the objective of the North Carolina Real Estate Licensing Board. However, the general intent of the agency has been interpreted by the court in the case of McArver v. Gerukos 265 N.C. 413 S.E. 2d 277 (1965), as being the protection of "sellers, purchasers, lessors, and lessees of real property from fraudulent or incompetent brokers and salesmen". The primary function of the Board as related by the Board is to issue real estate broker and salesman licenses to those applicants possessed of the "requisite honesty, truthfulness, integrity and competency".

The Board is expressly delegated licensing authority in G.S. 93S-4(d). The statute provides that applicants for licensure as a real estate broker or salesman must make written application on the prescribed form to the Board accompanied by the required fee. Prerequisites for application as a broker include U.S. citizenship, being twenty-one years of age, twelve months active experience as a real estate salesman, or evidence of experience in real estate transactions equivalent thereto, or evidence of the satisfactory completion of thirty classroom hours of courses of education in real estate subjects at a school approved by the Board. Applicants for licensure as a real estate salesman must furnish evidence of satisfactory completion of thirty classroom hours of courses in real estate transactions at an approved school or evidence satisfactory to the Board as experience in real estate transactions equivalent to such education.

A person desiring to be licensed as a real estate salesman or broker is required to take a written or oral examination to "determine his qualifications with due regard to the paramount interests of the public as to honesty, truthfulness, integrity and competency of the applicant". The regulations provide that the Board may consider any information before it with reference to the honesty, truthfulness and integrity of an applicant before issuing a license, the actual results of the examination notwithstanding.

Every applicant for a license has the burden of proving that he is possessed of the requisite character traits and entitled to the confidence of the public.

The examination tests the applicant's knowledge of the real estate business, including fundamentals of real estate finance, real estate brokerage, real estate appraising, real property law and the mechanics of closing as well as provisions of the licensing law and the rules and regulations of the Board. Currently the Board administers a national examination developed by Educational Testing Service of Princeton, New Jersey. Applicants who fail the examination or fail to appear for the examination are automatically rescheduled for the next examination held two months later.

The Board is authorized by statute to approve schools offering courses in real estate transactions. Evaluation responses from the Board indicate however, that this authority has been limited to approving courses offered by institutions and setting forth in the rules and regulations the subject to be covered in such courses. Schools seeking course approval must make written application to the Board. Exempted from the licensing examination are those persons engaged as real estate brokers or salesmen on the effective date of the statute, provided that such a person has not within the preceding five years been convicted of a felony or any misdemeanor involving moral turpitude. Also exempted are non-resident licensees of states which exempt North Carolina residents. Non-resident applicants must file an irrevocable consent to service of process and pleading.

Corporations wishing to engage in the real estate business must file a written application with the Board, showing that at least one executive officer holds a current broker's license in good standing.

The corporation is also required to employ and be directed by personnel possessing requisite truth, honesty, and integrity.

All licenses granted and issued by the Board expire the 30th day of June following issuance and become invalid unless reinstated. Licenses may be renewed by filing the proper application and paying a \$10.00 renewal fee. Licenses reinstated after the expiration date but within twelve months thereof, shall be subject to a \$5.00 late filing fee along with the \$10.00 renewal fee. If reinstatement is not effected within twelve months, the Board, at its discretion, may consider the applicant as if he had not been previously licensed and subject him to all the requirements for an original license.

Another function of the Board, as stated by the agency, is insuring that the activities of real estate brokers and salesmen are in compliance with the licensing law and such rules and regulations as may be promulgated by the Board. To effectuate this purpose the regulations provide for the filing and hearing of complaints, and the revocation or suspension of licenses.

Board standards are established through its rulemaking powers. The regulations provide that any person may file a petition requesting the adoption, amendment, or repeal of a rule. The secretary-treasurer will determine whether the public interest will be served by granting the request and render a final decision as to whether the petition will be denied or granted. Rulemaking notices are issued to interested persons

and a public hearing held if the decision is to grant the petitions.

The regulations allow the Board to investigate and assist in the preparation of written and verified complaints. If it appears from that complaint that a licensee has been guilty of a violation of the enabling statute or the rules and regulations of the Board, and if sufficient evidence of a violation exists, the Board will hold a public hearing. Hearings will be heard by any or all of the Board members or a designated hearing officer.

Possible penalties available to the Board are revocation or suspension of licenses. The Board may also refer a complaint for violation of the licensing law before any court of competent jurisdiction.

In assessing the degree to which the rules and regulations advance the statutory intent of protecting the public from fraudulent or incompetent brokers and salesmen, it becomes necessary to measure the effectiveness of the licensing and enforcement provisions of the agency. Many of the licensing requirements are statutorily mandated. The requirement that applicants for license be at least twenty-one years of age is no longer valid in that N.C.G.S 93B provides that no occupational licensing board may require that an individual be more than eighteen years of age as a requirement for receiving a license. While the U.S. citizenship requirement has not been held unconstitutional by the North Carolina Supreme Court, it is questionable and adds nothing



to the protection of the public from fraudulent licensees. Neither of these requirements is found in the regulations, however. The statute also defines the level of competency required to take the examination. Ethical standards are not described in detail, the primary requirement being that the applicant be possessed of the requisite honesty, truthfulness, integrity and competency. The regulations provide that the applicant has the burden of proving that he is so possessed; however, no provision is made for the appeal of the Board's decision that the applicant does not possess the proper character traits.

The statute as well as the regulations provide for the annual renewal of licenses upon the payment of a renewal fee. There is no requirement that licensees maintain a certain level of competency in order to renew their licenses, only that they be in good standing. The reciprocity provision of the statute as well as the regulations are effective only if the applicant's state extends the same reciprocal privilege to North Carolina residents. This stipulation implies that the true purpose of the provision is not to provide the public with qualified and honest licensees, but merely a convenience to the licensee and a courtesy to other states.

The main enforcement functions of the Board entail the hearing of complaints and the taking of disciplinary actions for violation of the licensing law. The regulations provide that the Board will investigate verified complaints only. Information which does not set forth the name and address of the informant will be disregarded. This provision has a chilling effect by discouraging the lodging of complaints against dishonest or incompetent licensed practitioners. The statute provides

that licenses may be revoked upon conviction or a finding of guilty on a nolo contendere plea of a criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud, or any similar offense or offenses involving moral turpitude. The Board has interpreted the statute to restrict it from disciplinary actions against licensees when crimes involving moral turpitude are committed. This appears to be a major omission in the protection of the public. Neither the statute nor the regulations stipulate the duration of revocation orders, nor how the public is to be informed when a licensee's certificate has been revoked.

A review of the evaluation response of the Real Estate Board revealed that the Board has two principal objectives: (1) To increase administrative efficiency in performing functions set forth in the licensing laws; and (2) to increase its involvement in education and information programs relating to the real estate brokerage business for the information, education, guidance and protection of the general public, licensees, and applicants for license. The first objective, which was given a score of forty (40) points on a scale of one hundred (100), is purely ministerial and limited to allowing for the more efficient operation of the organization. The second objective, which is divided into four (4) subparts carrying a total of sixty (60) points, focuses primarily on administering real estate informational and educational programs, raising the level of competency of persons entering the profession, raising the level of competency of persons licensed in real estate brokerage, and increasing consumer awareness of matters relating to buying, selling, exchanging, leasing, and/or renting real estate. The objectives as stated by the agency seem to indicate a conscious desire to protect the public as well as licensees and the applicants by



conducting educational and informational programs. While the licensing law provides for the expenditure of funds for just that purpose, the regulations of the agency make no mention of this worthwhile endeavor. The Board further expressed a desire to raise the level of competency and proficiency of persons who are licensed to engage in real estate brokerage. As previously noted the regulations make no provisions for the monitoring of licensees, nor are there any continuing education requirements for renewal of licenses. The objectives fail to include any provisions for the protection of the public from dishonest practitioners.

EVALUATION ELEMENT #7

*AN ASSESSMENT OF THE EFFECT OF THE AGENCY PROGRAM  
ON THE STATE ECONOMY INCLUDING COSTS TO CONSUMERS  
AND BUSINESSES.*

For the average person, the buying of residential property will represent the single largest transaction of his lifetime. Most homeowners are purchasing houses selling for more than twice their annual incomes given that the median sales price for a new house in 1978 is approaching \$50,000. (The Nation's Housing 1975-85, 1977, MIT, Harvard). When considering the transiency of our population coupled with the mounting housing costs, the impact of the real estate market on our state's economy can be fully appreciated.

The Real Estate Licensing Board was created to protect the economic welfare of our citizens. This far reaching responsibility encompasses public defense against price fixing or collusion by licensed real estate brokers. A six percent commission fee on residential property has, and to a lesser degree, a ten percent commission fee on commercial property have become industry standards. (See Economic Opinion). To fulfill its public obligation the Board should actively seek a review of price competition within the industry.

EVALUATION ELEMENT #8

AN EVALUATION OF THE REPORTING AND RECORD-KEEPING  
REQUIREMENTS AND ACTIVITIES OF THE AGENCY PROGRAM  
INCLUDING THE MANAGEMENT AND CONTROL OF INFORMATION  
AND RECORDS AND THE VALUE OF THE INFORMATION GATHERED  
COMPARED TO THE COST TO RESPONDENTS, AND AN ASSESSMENT  
OF METHODS TO REDUCE AND SIMPLIFY THE REPORTING AND  
RECORD-KEEPING REQUIREMENTS.

The Board by statute is required to keep a register of all applicants for license, and a current roster of all licensees. The Board is further required to file with the Secretary of State a report containing a complete statement of receipts and disbursements of the Board for the preceding fiscal year.

In addition to the records kept by the Board that are required by statute, the Board keeps financial records and administrative files on regulatory or enforcement actions taken. These files are kept indefinitely and include the name of the complainant as well as the name of the respondent. The Board maintains files of non-verified complaints which consist of letters of complaints which have not been notarized and properly verified. In a review of the agency's file, the staff chose several files at random and concluded that the information therein was relevant.

The Board had no difficulty locating these files and they were properly and efficiently indexed. Complaint files were indexed by the

respondent's or licensee's name. The Board also kept a record of the number of complaints against a particular licensee by inserting a copy of the complaint in the licensee's individual file. Overall, our review of the Board's file and record-keeping technique seems to indicate that the Board performs its operation in a comprehensive and efficient manner.

EVALUATION ELEMENT #9

*A SUMMARY STATEMENT OF THE BUDGET AND PROGRAM OF THE AGENCY  
FOR THE CURRENT FISCAL YEAR AND BUDGET PROJECTIONS FOR THE  
NEXT SUCCEEDING FISCAL YEAR IF THE PROGRAM WERE TO BE  
CONTINUED.*

The budget projections for fiscal year 1978-79, found in Table 5, represent a 31% increase in budgetary costs. The greatest proportional increase is for the financing of the licensing operation. With an estimated 41% increase in licensing expenditures, the budget for the next fiscal year calls for spending 4 times as much on licensing as for regulation and enforcement.

EVALUATION ELEMENT #10

*AN ASSESSMENT OF WHETHER THE AGENCY HAS PERMITTED  
QUALIFIED APPLICANTS TO SERVE THE PUBLIC, AND  
WHETHER THE AGENCY HAS ENCOURAGED PARTICIPATION  
BY THE PUBLIC IN MAKING ITS RULES AND DECISIONS,  
AS OPPOSED TO PARTICIPATION SOLELY BY THE PERSONS  
IT REGULATES.*

Currently there are some 32,000 licensed real estate brokers and salesmen. Entry into the profession does not appear to be unduly restricted. The Board has no ban on advertising, nor does it restrict a homeowner from selling or renting his own property without the aid of a broker or salesman. The citizenship requirement found in the statute has been held to be unconstitutional and the 21 years of age requirement has been superseded by G.S. 93B-9 establishing 18 years of age as the minimum.

To become licensed as a broker the applicant is required to have 12 months experience as a salesman or its equivalent or finish 30 hours of approved real estate courses at schools approved by the Board. The applicant is required to take and successfully complete an examination. Upon satisfactory completion of the examination, the applicant is considered for licensing with due regard being given to the applicant's honesty, truthfulness and integrity. The applicant must submit a \$25.00 application fee. To become licensed as a salesman the applicant is required to complete 30 classroom hours of instruction in real estate

courses at a school approved by the Board or submit evidence of experience equivalent thereto. A \$15.00 fee is required for the salesman license. The salesman must be associated with a licensed broker at all times.

Prior to adoption or amendment or appeal of a rule the Board gives notice of a public hearing and offers anyone an opportunity to present data, views and arguments. The Board is composed of five members who are appointed by the governor. Presently all five members of the Board are licensed brokers. To insure representation of a consumer perspective and to minimize the potential for industry influence on the Board, the addition of at least one public member to the Board should be seriously considered.

EVALUATION ELEMENT #11

*AN EVALUATION OF THE EXTENT TO WHICH OPERATION  
HAS BEEN EFFICIENT AND RESPONSIVE TO PUBLIC NEEDS.*

The Board has not surveyed the public, as such, to determine exactly what the needs are in regards to the licensing of real estate brokers and salesmen. If the public need is deemed to be one of providing an ample number of practitioners, the Board seemingly meets this responsibility through its licensing functions. As previously noted there are some 32,000 licensed real estate brokers and salesmen. If the public need is one of exercising regulatory authority over the licensees, the Board does not adequately protect the public from fraudulent licensees. This deficiency is primarily attributable to the narrow view the Board takes of its statutory authority. Operating within this limitation, the Board's handling of the verified complaints it receives is efficient and responsive to the public needs.

EVALUATION ELEMENT #12

AN EVALUATION OF THE EXTENT TO WHICH COMPLAINTS  
HAVE BEEN EXPEDITIOUSLY PROCESSED TO COMPLETION  
IN THE PUBLIC INTEREST.

Complaints filed with the Board must be verified before an investigation is commenced. The average time between the filing date, i.e., date formal complaint was received in the office of the Board, and the date of resolution, i.e., date on which the Board rendered its decision, i.e., is approximately 2 1/2 months. An example of such a case is where a licensee violates the professional standards of the statute while selling his own residential property.



EVALUATION ELEMENT #13

AN ANALYSIS OF THE SERVICES AND PERFORMANCE ESTIMATED  
TO BE ACHIEVED IF THE AGENCY OR AGENCY PROGRAM WERE  
CONTINUED.

Absent modifications to strengthen the Board's regulatory  
authority, the services and performance estimated to be achieved under  
this program would be no different from those achieved in the past.

NORTH CAROLINA REAL ESTATE LICENSING BOARD

LICENSING PROFILE  
 1977-78

	<u>Broker</u>	<u>Salesman</u>	<u>Corporation</u>	<u>Total</u>
<u>Applications Processed</u>				
By examination	8,079	890	-	
By reciprocity	154	129		
Under grandfather clause	0	0	323	
	<u>8,233</u>	<u>1,019</u>	<u>323</u>	9,575
<u>Examinations Administered</u>	9,500	851	-	10,351
<u>Licenses Issued</u>				
By examination	4,715	523		
By reciprocity	141	121		
Under grandfather clause	0	0	300	
	<u>4,856</u>	<u>644</u>	<u>300</u>	5,800
<u>Record Changes</u>				13,500
<u>Licenses Renewed</u>		30,409	1,602	32,011

LICENSING HISTORY

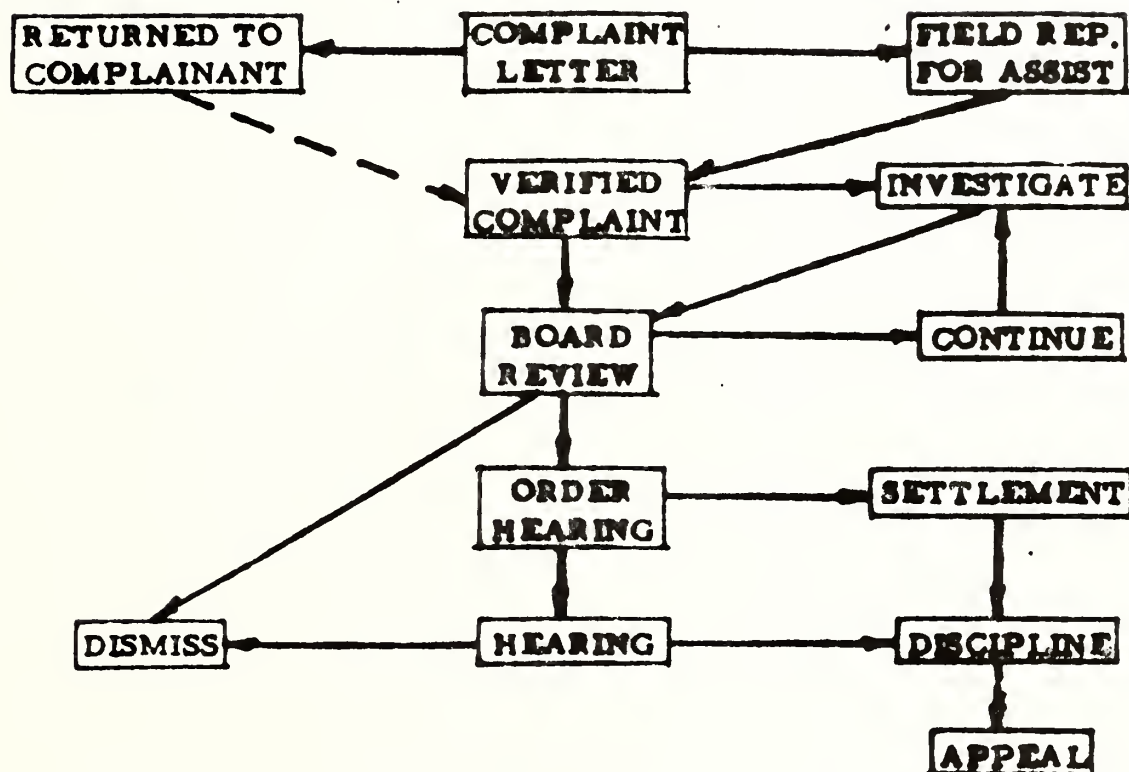
Fiscal Years: 1973 - 1974 - 1975 - 1976 - 1977 - 1978

No. of applications for licenses	12,782	5,068	5,569	7,634	9,565
No. of licenses granted	5,840	3,195	2,607	5,055	5,800
No. of licensed practitioners	22,325	24,410	24,749	30,522	32,011

\* Statistics regarding applications, examinations, and license issuance were compiled from information contained in the Annual Report of the North Carolina Real Estate Licensing Board filed with the Secretary of State and Attorney General on August 1, 1978.

NORTH CAROLINA REAL ESTATE LICENSING BOARD

**COMPLAINT PROCEDURE**



**HISTORY OF ENFORCEMENT**

	Fiscal Years: 1973 - 1974 - 1975 - 1976 - 1977 - 1978				
No. of licensed practitioners	22,325	24,410	24,749	30,522	32,011
No. of complaints processed (letters of complaint/verified complaint)	133	182	168	149	179
No. of disciplinary hearings	21	19	26	18	30
No. of licenses revoked	5	6	6	15	9
suspended	2	10	8	10	9
Licensees Reprimanded	0	0	4	12	8

BUDGETARY COSTS INCURRED IN OPERATION OF  
REAL ESTATE LICENSING BOARD PROGRAM  
FOR FISCAL 1977-78

Licensing Expenses:

Exam Expenses	\$ 109,989.15	
Computer Cost	15,966.58	
Printing <sup>1</sup>	36,028.37	
Credit Reports	695.30	
Staff Expenses	129.75	
<u>Total Licensing Expenses</u>		\$162,809.15

Regulatory Expenses:

Fieldmen Expenses	16,746.83	
Hearing Expenses	4,016.28	
Attorney General Legal Expenses	24,945.98	
<u>Total Regulatory Expenses</u>		\$ 45,709.09

Other Operating Expenses: <sup>2</sup>

Board/Staff Salaries and Expenses	222,556.84	
Professional Fees, Dues & Subscriptions	1,748.85	
Office Machines/Equipment	8,094.43	
Supplies, Postage	45,441.07	
Office Rent	14,441.72	
Telephone	4,591.86	
Insurance & Bonding	2,477.22	
Miscellaneous	284.32	
<u>Total Other Operating Expenses:</u>		\$299,636.31

<u>Total Budgetary Costs Incurred in Operation of 1977-78 Program</u>	\$508,154.55
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<sup>1</sup>  
Includes \$16,400 for printing Real Estate Bulletin, an educational publication of the Licensing Board.

<sup>2</sup>  
Cannot be classified or defined strictly as either licensing expense or regulatory expense.

NORTH CAROLINA REAL ESTATE LICENSING BOARD  
PERSONNEL

(Summary Statement)

<u>DESCRIPTIVE TITLE</u>	<u>SALARY</u>
1 Secretary-Treasurer	\$ 29,460.00
1 Administrative Assistant	22,140.00
1 R.E. Investigator/Field Rep.	17,670.00
1 R.E. Investigator/Field Rep.	17,923.00
1 R.E. Investigator/Field Rep.	16,577.00
1 Financial/Clerical Supervisor	12,246.00
1 Application Processor	10,411.00
1 Salesman/Corporation Clerk	8,625.00
1 Records Clerk	8,262.00
1 Secretary/Receptionist	8,022.00
1 Legal Secretary	2,604.00
	<hr/>
	\$ 153,940.00

COST OF PERSONNEL

7/1/77 - 6/30/78

Permanent Full-Time	\$ 153,940.00
Part-Time *	14,257.66
	<hr/>
	\$ 168,197.66

\* Examination monitors, additional clerical workers for annual license

North Carolina Real Estate Licensing Board

Revenue:	Budgets:	<u>Fiscal 77-78</u>	<u>Fiscal 78-79</u>
<u>Renewal Fees:</u>			
Broker & Salesmen		\$ 321,365.00	\$ 379,700.00
Corporations		16,730.00	18,810.00
Partnerships		10.00	10.00
<u>Total Renewal Fees:</u>		338,105.00	398,520.00
 <u>Application Fees:</u>			
<u>By Examination:</u>			
Brokers & Salesmen		215,145.00	276,500.00
<u>Reciprocity</u>			
Brokers & Salesmen		5,785.00	8,750.00
<u>Section 93A-4B:</u>			
Brokers & Salesmen			20.00
<u>Corporations:</u>		8,075.00	8,750.00
<u>Total Application Fees:</u>		229,005.00	294,020.00
 <u>Other Receipts:</u>			
Royalty Payment		4,313.00	4,000.00
Duplicate Certificates		1,054.00	2,500.00
Interest Income		28,136.00	39,735.00
Late Filing Fees		7,685.00	8,685.00
Miscellaneous		674.90	700.00
<u>Total Other Receipts:</u>		41,863.70	55,620.00
 <u>Expenses:</u>			
Exam Expenses		109,989.15	150,000.00
Computer Cost		15,966.58	27,000.00
Printing		36,028.37	52,000.00
Credit Reports		695.30	1,000.00
Staff Expenses		129.75	200.00
<u>Total Licensing Expenses</u>		162,809.15	230,200.00

Budgets (Continued)	<u>Fiscal 77-78</u>	<u>Fiscal 78-79</u>
<u>Regulatory Expenses:</u>		
Fieldmen Expenses	16,746.83	21,700.00
Hearing Expenses	4,016.28	8,000.00
Attorney General Legal Expenses	24,945.98	28,800.00
<u>Total Regulatory Expenses:</u>	45,709.09	58,500.00
<u>Other Operating Expenses<sup>2</sup></u>		
Board/Staff Salaries/Expenses	222,556.84	302,900.00
Professional Fees, Dues & Subscriptions	1,748.85	2,700.00
Office Machines & Equipment	8,094.43	13,600.00
Supplies, Postage	45,441.07	64,500.00
Office Rent	14,441.72	14,500.00
Telephone	4,591.86	6,000.00
Educational Programs		5,000.00
Miscellaneous	284.32	900.00
<u>Total Other Operating Expenses:</u>	299,636.31	410,100.00
<u>Total Budgetary Costs Incurred in Operation of 1977-78 Program:</u>	508,154.55	
<u>Total Revenue over Operating Expenses for 1978-79</u>		49,360.00

1

Includes \$16,400 (77-78) for printing Real Estate Bulletin.  
 \$19,000 (78-79) " " " " " "

2

Cannot be classified or defined strictly as either licensing expense  
 or regulatory expense.





Budgets (Continued)	<u>Fiscal 77-78</u>	<u>Fiscal 78-79</u>
<u>Regulatory Expenses:</u>		
Fieldmen Expenses	16,746.83	21,700.00
Hearing Expenses	4,016.28	8,000.00
Attorney General Legal Expenses	24,945.98	28,800.00
<u>Total Regulatory Expenses:</u>	45,709.09	58,500.00
<u>Other Operating Expenses<sup>2</sup></u>		
Board/Staff Salaries/Expenses	222,556.84	302,900.00
Professional Fees, Dues & Subscriptions	1,748.85	2,700.00
Office Machines & Equipment	8,094.43	13,600.00
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Telephone	4,591.86	6,000.00
Educational Programs		5,000.00
Miscellaneous	284.32	900.00
<u>Total Other Operating Expenses:</u>	299,636.31	410,100.00
<u>Total Budgetary Costs Incurred in Operation of 1977-78 Program:</u>	508,154.55	
<u>Total Revenue over Operating Expenses for 1978-79</u>		49,360.00

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